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Eleanor J. Doyle
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October 14, 2016

Via email: secretary@fmc.gov

FILED

OCT 14 2016

Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Federal Maritime Commission
Office of the Secretary

Att: Office of the Secretary

RE: Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov, Empire
United Lines Co., Inc.
Docket No: 14-16

Dear Secretary of the Federal Maritime Commission:

I represent the Respondents in the captioned matter, and take this opportunity to respond to the October 7, 2016 letter from Complainant's counsel ("Nussbaum Letter"), addressed to ALJ Guthridge, which has been forwarded to the Secretary by ALJ Guthridge for appropriate action.

The Nussbaum Letter makes several charges about me personally, accusing me of defrauding the Commission, and threatens me with "a potential reference for criminal prosecution".

For the record, I deny all of the charges as well as any criminal misconduct.

Counsel for the Complainant refers to a settlement conference in another matter that was made "on the record", and claims that the transcript has been made available to the Commission, but has refused to provide me with a copy of what was submitted to the Commission.

I have attached a transcript of a settlement conference held on April 21, 2016 ("Transcript"), in the matter of *Empire United Lines Co. Inc. et ano. vs. Baltic Auto*

Shipping, Inc. et ano. (U.S. District Court, District of New Jersey; Docket 15-cv-355 (CCC) (MF)).

Counsel for the Complainant states that at the settlement conference Respondent Hitrinov “*waived* any and all rights to costs or attorneys’ fees” in the captioned action (emphasis in the original).

A search of the attached Transcript finds no support for this allegation. What the transcript does reveal is that it was agreed that the “appeal” (*i.e.*, the Complainant’s Exceptions to the Initial Decision herein) was to be withdrawn.

The Transcript of the settlement conference:

“[Court Appointed Special Master, retired U.S.D.C., D.N.J. Judge.] MR. CAVANAUGH:... And the appeal that's pending, which is --

MR. WERNER: It's Federal Maritime Commission Docket 14-15 [*sic*].

MR. CAVANAUGH: That will also be withdrawn immediately.

(Transcript, p. 4, 2-10)

MR. CAVANAUGH: ... Anything you want to add, Mr. Werner?

MR. WERNER: Yes. I think that the necessary and essential condition of this settlement is that the parties agree to have their counsel in the Federal Maritime Commission proceeding, Docket 14-16, write within 48 hours to the administrative law judge and the Commission advising that the intention of the parties is to settle that dispute and that the appeal that is currently pending should be staid, if necessary.

(Transcript, p. 6, 14 – 7, 5)

“MR. CAVANAUGH: Just a minute ago Mr. Hitrinov had some comments on the record and I want it clear

that those comments we've now had clarification and that he does agree with the settlement and the matter is settled.

Is that correct, Mr. Hitrinov?

MR. HITRINOV: I would like to have a clarification one more time. I agree, but I just want to make sure it's on the record that the appeal from the FMC Commissions will be withdrawn within 48 hours like Mr. Werner said. If the parties agree like we said before then I accept it.

Is it correct?

[Attorney for Baltic Auto Shipping, Inc. and Andrejus Presniakovas] MR. KATZ: I think that's everything that was put on the record, your Honor.

MR. HITRINOV: Am I correct, your Honor?

MR. CAVANAUGH: You are correct.

MR. HITRINOV: And counsel for the defendant in this case will confirm it; right?

MR. KATZ: What was that?

MR. CAVANAUGH: Do you confirm that on the record?

MR. KATZ: We said that, Judge.

MR. HITRINOV: Then I have no problem.

MR. CAVANAUGH: Thank you, sir.

(Transcript, p.14, 8- 15, 24) (all emphasis added)

There is no mention of any waiver of the right to costs or attorneys' fees in the entire transcript. Indeed, there is no form of the word "waive", nor any mention of "attorneys' fees" in the Transcript.

The word that does appear – frequently – is "appeal".

October 14, 2016

Accordingly, Respondents herein disagree with Counsel for Complainant's assertion in his October 7, 2016 letter that "respondent Hitrinov herein had previously *waived* any and all rights to costs or attorneys' fees arising out of this actions , as part of a separate Settlement Agreement ... and as confirmed in a settlement conference made 'on the record'." (Italics and internal quotation marks in the original.)

Counsel for Complainant is served by email and mail.

A Certificate of Service is attached to this letter.

If there are any questions, please contact me.

Respectfully submitted,



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Attorney for Complainant
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached letter upon Complainant's counsel, Marcus A. Nussbaum, Esq., with the address of P.O. Box 245599, Brooklyn, NY 11224 by first class mail, postage prepaid and by email (marcus.nussbaum@gmail.com); and that the original and five (5) copies are being filed with the Secretary of the Federal Maritime Commission.



October 14, 2016

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Michael Hitrinov, a/k/a Michael Khitrinov, and
Empire United Lines, Co., Inc.

Dated in Short Hills, N.J. this 14th day of October, 2016.

ATTACHMENT

Transcript of a settlement conference held on April 21, 2016 in the matter of *Empire United Lines Co. Inc. et ano. vs. Baltic Auto Shipping, Inc. et ano.* (U.S. District Court, District of New Jersey; Docket 15-cv-355 (CCC) (MF)).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

-----X

EMPIRE UNITED LINES CO., INC. and
MICHAEL HITRINOV,

Plaintiffs,

-vs-

BALTIC AUTO SHIPPING, INC. and
ANDREJUS PRESNIAKOVAS,

Defendants.

CIVIL ACTION#: 15-cv-355(CCC) (MF)

-----X

DATE: April 21st, 2016

TIME: 12:10 p.m.

Statement in the above
captioned matter, held at 570 Broad
Street, Newark, New Jersey, before a
Notary Public of the State of New
Jersey.

A P P E A R A N C E S:

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A L S O P R E S E N T:

HOWARD BRODSKY, VIDEOGRAPHER

ANDREW TARUTZ, RUSSIAN INTERPRETER

* * * * *

1 MR. CAVANAUGH: This is the
2 matter of Empire United Lines,
3 et al. versus Baltic Auto
4 Shipping, Incorporated. It's
5 civil action number 15-355.
6 The case is assigned to Judge
7 Cecchi and Magistrate Judge
8 Falk. We are here today for
9 the plaintiff's deposition.
10 Prior to the deposition we
11 continued our discussions from
12 the mediation that we began
13 that was conducted a week or so
14 ago and it looks as if we've
15 resolved this matter.

16 I'll state on the record
17 what I think the resolution
18 is and, counsel, please correct
19 me if I say anything that's
20 incorrect.

21 This case will be settled
22 along with the -- there's a
23 case pending in Eastern
24 District of New York, which is
25 Empire United versus

1 Presniakovas, et al. It's case
2 number 1:15-5557. That case is
3 also going to be settled,
4 resolved. And the appeal
5 that's pending, which is --

6 MR. WERNER: It's Federal
7 Maritime Commission Docket
8 14-15.

9 MR. CAVANAUGH: That will
10 also be withdrawn immediately.
11 So all three of these cases
12 will be resolved fully and
13 finally. There will be a
14 confidentiality order that the
15 parties will prepare. And I
16 believe that the parties agree
17 that to the extent there's any
18 language in the confidentiality
19 order that is not agreed upon
20 or if they can't agree upon the
21 language then it will be
22 submitted to me as the final
23 arbiter of the language that
24 should be contained in the
25 confidentiality order.

1 Do you agree with that, Mr.
2 Werner?

3 MR. WERNER: Yes, I do.

4 MR. CAVANAUGH: Mr.
5 Nussbaum, do you agree with
6 that?

7 MR. NUSSBAUM: Yes, Judge.

8 MR. CAVANAUGH: Okay.

9 I also want to make note
10 that both the parties were here
11 at the mediation when we had
12 extensive arm's length
13 negotiations and plaintiff is
14 here today, who has been
15 intimately involved in the
16 negotiations, along with Mr.
17 Werner and myself and both Mr.
18 Katz and Mr. Nussbaum. And I
19 also want to note that Mr. Katz
20 and Mr. Nussbaum have been in
21 continued telephone
22 communications with their
23 client, who understands and
24 agrees to the settlement.

25 Is that correct?

1 MR. KATZ: That is correct,
2 your Honor.

3 MR. CAVANAUGH: So the
4 matter, as far as I'm
5 concerned, will be marked as
6 fully and finally settled. I
7 will contact Judge Falk and a
8 60-day order will go into
9 place. Judge Cecchi will be
10 notified. I will let counsel
11 contact the other two entities
12 that we've also settled and
13 that should resolve it.

14 Anything you want to add,
15 Mr. Werner?

16 MR. WERNER: Yes. I think
17 that the necessary and
18 essential condition of this
19 settlement is that the parties
20 agree to have their counsel in
21 the Federal Maritime Commission
22 proceeding, Docket 14-16, write
23 within 48 hours to the
24 administrative law judge and
25 the Commission advising that

1 the intention of the parties is
2 to settle that dispute and that
3 the appeal that is currently
4 pending should be staid, if
5 necessary.

6 Does Mr. Katz agree to that
7 condition?

8 MR. KATZ: I want to respond
9 to that, your Honor, and also
10 two other brief points.

11 In the first instance, the
12 case in the Eastern District of
13 New York is not being settled,
14 it's being discontinued. Now,
15 it's my understanding that Mr.
16 Werner has a motion to
17 voluntarily withdraw his claim.
18 I would ask as a condition to
19 the settlement that that motion
20 be withdrawn and the parties
21 execute a stipulation of
22 discontinuance. I just want it
23 to be crystal clear on the
24 record that that matter is
25 being discontinued as a lately

1 imposed condition of the
2 settlement of this case and
3 that matter is not being
4 settled.

5 MR. CAVANAUGH: Be that as
6 it may, it's going to be gone;
7 correct?

8 MR. KATZ: That is correct.

9 MR. WERNER: Am I clear that
10 the discontinuation of the
11 Eastern District of New York
12 case will be with prejudice and
13 without costs?

14 MR. KATZ: With prejudice
15 and without costs and will be
16 contingent upon counsel
17 withdrawing his motion and a
18 stipulation of discontinuance
19 will be entered into.

20 MR. CAVANAUGH: Well, there
21 won't be any motion if the case
22 is gone.

23 MR. KATZ: We would request
24 that counsel as a procedural
25 matter withdraw his motion and

1 then we will execute a
2 stipulation of discontinuance.
3 So the matter will be
4 discontinued and not settled.

5 One or two other points,
6 your Honor.

7 MR. CAVANAUGH: Wait.

8 Is that --

9 MR. WERNER: First of all, I
10 have no problem whatsoever with
11 that. However, I just want to
12 be clear that the release that
13 will be negotiated and signed
14 consummating the settlement
15 will be a mutual general
16 release releasing any
17 complaints whatsoever of any
18 nature that the parties may
19 have against each other that
20 can be brought in any form.

21 MR. CAVANAUGH: Up until
22 today.

23 MR. WERNER: In any form.

24 MR. KATZ: With regard to
25 this matter.

1 MR. HITRINOV: Any matter.

2 MR. CAVANAUGH: Up until
3 today.

4 MR. KATZ: Your Honor, I'm
5 going to ask that the parties
6 not speak on the record and
7 that the attorneys speak.

8 MR. CAVANAUGH: Okay.

9 MR. KATZ: Second of all,
10 your Honor, we won't be
11 releasing the parties in the
12 Eastern District case as part
13 of this settlement, we will be
14 discontinuing that case with
15 prejudice. There is no claim
16 against anybody in the Eastern
17 District associated with this
18 claim. We are going to release
19 Mr. Hitrinov, his company and
20 his attorneys from any and all
21 liability arising out of this
22 case and as part and parcel of
23 this settlement we are
24 discontinuing the Eastern
25 District case. So technically

1 speaking there is no release
2 for the Eastern District case,
3 because they are not part of
4 this lawsuit.

5 MR. CAVANAUGH: It's going
6 to be dismissed without
7 prejudice.

8 MR. KATZ: The end result is
9 the same. It's going to be
10 discontinued with prejudice
11 with all sides executing a
12 stipulation of discontinuance.

13 MR. HITRINOV: No. Let's
14 continue with the deposition.
15 I don't want this settlement.

16 MR. CAVANAUGH: Stop.

17 MR. HITRINOV: Your Honor, I
18 withdraw myself from this
19 conference. I want to continue
20 with the deposition today. I
21 don't want the settlement any
22 more.

23 MR. KATZ: Your Honor --

24 MR. HITRINOV: I want to
25 discontinue this.

1 MR. CAVANAUGH: Michael --

2 MR. HITRINOV: I don't want
3 this any more. I settled this
4 case in 2011 and I don't want
5 to again. Your Honor, please
6 allow me to continue with the
7 deposition on this case.

8 MR. KATZ: Judge, now you
9 see the --

10 MR. CAVANAUGH: Stop,
11 please.

12 MR. WERNER: I think it's
13 appropriate now to go off the
14 record. I think we have some
15 more matters to discuss.

16 MR. KATZ: I disagree,
17 Judge.

18 MR. CAVANAUGH: I don't
19 disagree.

20 Off the record.

21

22 (Whereupon, a discussion was
23 held off the record.)

24

25 MR. CAVANAUGH: We went off

1 the record for clarification
2 purposes. We have now
3 clarified, I believe, regarding
4 this release language. There
5 was some concern as to whether
6 it was would be
7 all-encompassing. It's going
8 to be a general release.

9 I believe Mr. Nussbaum and
10 Mr. Katz agree with that?

11 MR. NUSSBAUM: Correct, your
12 Honor.

13 MR. KATZ: Yes, that's
14 correct, your Honor.

15 MR. CAVANAUGH: Mr. Werner,
16 am I correct on that?

17 MR. WERNER: Yes, a general
18 mutual release is what's agreed
19 upon.

20 MR. CAVANAUGH: It will be a
21 mutual release. Payment within
22 60 days. Half in 30 days and
23 the remainder by 60 days. And
24 the case is done. The
25 Magistrate Judge will preserve

1 jurisdiction until then and the
2 case is over.

3 MR. KATZ: When will you be
4 advising the courts, your
5 Honor?

6 MR. CAVANAUGH: When we walk
7 out the door, Mr. Katz.

8 MR. KATZ: I appreciate
9 that, Judge.

10 MR. CAVANAUGH: Just a
11 minute ago Mr. Hitrinov had
12 some comments on the record and
13 I want it clear that those
14 comments we've now had
15 clarification and that he does
16 agree with the settlement and
17 the matter is settled.

18 Is that correct, Mr.
19 Hitrinov?

20 MR. HITRINOV: I would like
21 to have a clarification one
22 more time. I agree, but I just
23 want to make sure it's on the
24 record that the appeal from the
25 FMC Commissions will be

1 withdrawn within 48 hours like
2 Mr. Werner said. If the
3 parties agree like we said
4 before then I accept it.

5 Is it correct?

6 MR. KATZ: I think that's
7 everything that was put on the
8 record, your Honor.

9 MR. HITRINOV: Am I correct,
10 your Honor?

11 MR. CAVANAUGH: You are
12 correct.

13 MR. HITRINOV: And counsel
14 for the defendant in this case
15 will confirm it; right?

16 MR. KATZ: What was that?

17 MR. CAVANAUGH: Do you
18 confirm that on the record?

19 MR. KATZ: We said that,
20 Judge.

21 MR. HITRINOV: Then I have
22 no problem.

23 MR. CAVANAUGH: Thank you,
24 sir.

25 Anything further you want to

1 put on the record, Mr. Katz?

2 MR. KATZ: Your Honor, just
3 to thank you for your
4 extraordinary patience,
5 tenacity and your efforts in
6 aiding the parties to reach a
7 resolution in this extremely
8 troublesome and problematic
9 case.

10 MR. CAVANAUGH: Well, I know
11 that we may not all agree with
12 things, but we had reasonable
13 people and good lawyers to talk
14 and we discussed and I think
15 this is a fine settlement and I
16 do think it was arm's length
17 and I do think all the parties
18 do understand, because we had
19 plenty of time and no one was
20 under duress.

21 So the case is now settled
22 and I will contact the court
23 immediately and move on with
24 your lives.

25 MR. WERNER: Thank you, your

1 Honor.

2 MR. NUSSBAUM: Thank you,
3 your Honor.

4 MR. KATZ: Thank you, your
5 Honor.

6
7 (Whereupon, the proceedings
8 were concluded at 12:40 p.m.)
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CERTIFICATION

I, RAUL M. TORRES, hereby
certify that the within was held
before me on the 21st day of April,
2016.

That the testimony was taken
stenographically by myself.

That the within transcript
is a true and accurate record.

That I am not connected by
blood or marriage with any of the
parties. I am not interested directly
or indirectly in the matter in
controversy.

IN WITNESS WHEREOF, I have
hereunto set my hand this 21st day of
April, 2016.

RAUL M. TORRES

<p>A</p> <p>accept 15:4 accurate 18:10 action 1:12 3:5 add 6:14 administrative 6:24 advising 6:25 14:4 ago 3:14 14:11 agree 4:16,20 5:1,5 6:20 7:6 13:10 14:16 14:22 15:3 16:11 agreed 4:19 13:18 agrees 5:24 aiding 16:6 al 3:3 4:1 all-encompass... 13:7 allow 12:6 ANDREJUS 1:10 ANDREW 2:20 anybody 10:16 appeal 4:4 7:3 14:24 appreciate 14:8 appropriate 12:13 April 1:14 18:5 18:18 arbiter 4:23 arising 10:21 arm's 5:12 16:16 assigned 3:6 associated 10:17 attorneys 2:8,13 10:7,20 Auto 1:9 3:3</p>	<p>C 2:1 captioned 1:18 CARPENTER 2:3 case 3:6,21,23 4:1,2 7:12 8:2 8:12,21 10:12 10:14,22,25 11:2 12:4,7 13:24 14:2 15:14 16:9,21 cases 4:11 CAVANAUGH 2:5 3:1 4:9 5:4 5:8 6:3 8:5,20 9:7,21 10:2,8 11:5,16 12:1 12:10,18,25 13:15,20 14:6 14:10 15:11 15:17,23 16:10 Cecchi 3:7 6:9 CERTIFICA... 18:1 certify 18:4 civil 1:12 3:5 claim 7:17 10:15,18 clarification 13:1 14:15,21 clarified 13:3 clear 7:23 8:9 9:12 14:13 client 5:23 comments 14:12 14:14 Commission 4:7 6:21,25 Commissions 14:25 communicatio... 5:22 company 10:19 complaints 9:17 concern 13:5 concerned 6:5 concluded 17:8 condition 6:18 7:7,18 8:1 conducted 3:13 conference 11:19 confidentiality 4:14,18,25 confirm 15:15 15:18 connected 18:11 consummating 9:14</p>	<p>contact 6:7,11 16:22 contained 4:24 contingent 8:16 continue 11:14 11:19 12:6 continued 3:11 5:21 controversy 18:15 correct 3:18 5:25 6:1 8:7,8 13:11,14,16 14:18 15:5,9 15:12 costs 8:13,15 counsel 2:15 3:18 6:10,20 8:16,24 15:13 court 1:1 16:22 courts 14:4 crystal 7:23 currently 7:3</p> <p>D</p> <p>DATE 1:14 day 18:5,17 days 13:22,22 13:23 defendant 15:14 Defendants 1:11 2:13 DENNIS 2:5 deposition 3:9 3:10 11:14,20 12:7 DEUTSCH 2:3 directly 18:13 disagree 12:16 12:19 discontinuance 7:22 8:18 9:2 11:12 discontinuation 8:10 discontinue 11:25 discontinued 7:14,25 9:4 11:10 discontinuing 10:14,24 discuss 12:15 discussed 16:14 discussion 12:22 discussions 3:11 dismissed 11:6 dispute 7:2 District 1:1,2 3:24 7:12 8:11</p>	<p>10:12,17,25 11:2 Docket 4:7 6:22 door 14:7 duress 16:20</p> <p>E</p> <p>E 2:1,1,17,17 Eastern 3:23 7:12 8:11 10:12,16,24 11:2 efforts 16:5 Empire 1:5 3:2 3:25 entered 8:19 entities 6:11 ESQ 2:10,12,14 2:15 essential 6:18 et 3:3 4:1 Exchange 2:8 execute 7:21 9:1 executing 11:11 extensive 5:12 extent 4:17 extraordinary 16:4 extremely 16:7</p> <p>F</p> <p>Falk 3:8 6:7 far 6:4 Federal 4:6 6:21 final 4:22 finally 4:13 6:6 fine 16:15 first 7:11 9:9 FLOOD 2:7 FMC 14:25 form 9:20,23 fully 4:12 6:6 further 15:25</p> <p>G</p> <p>general 9:15 13:8,17 go 6:8 12:13 going 4:3 8:6 10:5,18 11:5,9 13:7 good 16:13</p> <p>H</p> <p>Half 13:22 hand 18:17 held 1:18 12:23 18:4 hereunto 18:17 Hitrinov 1:6</p>	<p>10:1,19 11:13 11:17,24 12:2 14:11,19,20 15:9,13,21 HON 2:5 Honor 6:2 7:9 9:6 10:4,10 11:17,23 12:5 13:12,14 14:5 15:8,10 16:2 17:1,3,5 hours 6:23 15:1 HOWARD 2:18</p> <p>I</p> <p>immediately 4:10 16:23 imposed 8:1 Incorporated 3:4 incorrect 3:20 indirectly 18:14 instance 7:11 intention 7:1 interested 18:13 INTERPRET... 2:20 intimately 5:15 involved 5:15</p> <p>J</p> <p>Jersey 1:2,19,21 2:5 JON 2:10 judge 3:6,7 5:7 6:7,9,24 12:8 12:17 13:25 14:9 15:20 jurisdiction 14:1</p> <p>K</p> <p>Katz 2:15 5:18 5:19 6:1 7:6,8 8:8,14,23 9:24 10:4,9 11:8,23 12:8,16 13:10 13:13 14:3,7,8 15:6,16,19 16:1,2 17:4 know 16:10</p> <p>L</p> <p>L 2:17 language 4:18 4:21,23 13:4 lately 7:25 law 6:24 lawsuit 11:4 lawyers 16:13</p>	<p>length 5:12 16:16 Let's 11:13 liability 10:21 Lines 1:5 3:2 lives 16:24 LLP 2:3,7 looks 3:14 LYONS 2:7</p> <p>M</p> <p>M 2:5,15 18:3 18:21 Magistrate 3:7 13:25 MARCUS 2:12 2:14 Maritime 4:7 6:21 marked 6:5 marriage 18:12 matter 1:18 3:2 3:15 6:4 7:24 8:3,25 9:3,25 10:1 14:17 18:14 matters 12:15 McELROY 2:3 mediation 3:12 5:11 Michael 1:6 12:1 minute 14:11 motion 7:16,19 8:17,21,25 move 16:23 MULVANEY 2:3 mutual 9:15 13:18,21</p> <p>N</p> <p>N 2:1,17 nature 9:18 necessary 6:17 7:5 negotiated 9:13 negotiations 5:13,16 New 1:2,19,20 2:5,10,10,14 3:24 7:13 8:11 Newark 1:3,19 2:5 Notary 1:20 note 5:9,19 notified 6:10 number 3:5 4:2 Nussbaum 2:12 2:14 5:5,7,18</p>
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